

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6606
PETITION OF EMILY VOLZ**

OPINION OF THE BOARD
(Hearing Held on March 13, 2019)
(Effective Date of Opinion: March 21, 2019)

Case No. A-6606 is an application by Emily Volz (the "Petitioner") for a variance to permit the proposed rehabilitation and expansion of an existing accessory structure (garage) in a location forward of the rear building line. Section 59-4.4.9.B.2.a of the Montgomery County Zoning Ordinance requires that accessory structures be located in the rear yard only.

The Board of Appeals held a hearing on the application on March 13, 2019. Petitioner Emily Volz appeared pro se at the hearing, with her husband Harry Volz.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 17, Block 18, Capitol View Park Subdivision, located at 2801 Barker Street, Silver Spring, MD, 20910, in the R-60 Zone. It is approximately 1.3 acres in size. Per the Statement of Justification ("Statement") submitted with this variance application, the subject property "is part of a subdivision of an older property of several acres. The subdivision was done in 1986, creating six lots from the original one." See Exhibit 3.

2. The Statement notes that the Petitioner lives in the house that existed on the property when it was subdivided (the "original" house), that the house is setback approximately 190 feet from Barker Street, and that it is "virtually invisible from Barker Street, even in winter." The Statement further notes that the property also contains an accessory structure which is set back approximately 40 feet from the front property line and needs "extensive repairs." The Statement indicates that this accessory structure is "nonconforming,"¹ and that it "was part of the property at the time of our purchase and

¹ The building permit denial issued by the County's Department of Permitting Services also refers to the existing accessory structure as nonconforming. See Exhibit 6(a).

predates the historic status designation of Capitol View Park.” Finally, the Statement states that like the house, the existing accessory structure is “virtually invisible from the street,” and that with the proposed addition, it will be “barely more visible than the existing structure, due to the proposed addition being set back from the front wall.” See Exhibits 3 and 5(i)-(j) (photographs).

3. The Statement asserts that “[t]here is virtually no possibility of locating a garage in the rear of the house” for the following reasons:

The location and width of the existing house, the large side and rear yard trees, side yard slopes and a West side stone terrace allow for no driveway access from the street to the rear of the property. In addition, much of the rear yard is a dedicated conservation zone on a steep, wooded slope, all of which preclude the building of a new garage. Also, there is no adjacent street to provide rear access.

See Exhibit 3. The Statement further indicates that “[n]either the protected trees nor the Conservation Zone” would be affected by the proposed construction. The Petitioner included a photograph showing the slope in the rear yard with her variance application. See Exhibit 5(g). In addition, the site plan shows the limits of a conservation easement and a flood plain behind the house on the subject property. See Exhibit 4.

4. The Statement indicates that the proposed improvements and addition to the existing accessory structure are acceptable to the Montgomery County Historic Preservation Board, and the Petitioner includes a Historic Area Work Permit for the proposed construction with her submission. See Exhibits 3 and 6(b). The Statement concludes, based on this approval, that the requested variance can be granted without substantial impairment to the integrity and intent of the general plan and applicable master plan. The Statement further asserts that the grant of the variance will not be adverse to the use and enjoyment of abutting or confronting properties, noting that only one such neighbor asked to review their plans, and that that neighbor was satisfied with their proposal. Finally, the Statement notes that no one had attended the Historic Preservation Commission meeting at which the proposed construction was considered, or had raised objections. See Exhibit 3.

5. At the hearing, the Petitioner testified that she believes the subject property received its historic designation primarily because of its trees, one of which she testified is a four-foot wide Civil War-era tree. Her husband testified that the subject property is heavily wooded, especially the area behind and to the right of the existing house. The Petitioner testified that there is no area in which to park cars behind the house because of this heavy tree cover, and because the area is sloped and is in a Conservation Zone. She indicated that the removal of trees may have resulted in a denial of the Historic Area Work Permit by the Historic Preservation Commission. The Petitioner and her husband testified that the area in which they now park their cars is the least wooded area of the property, but is still under large trees which drop limbs and other debris.

The Petitioner testified that the nearby houses on Leafy Avenue all have garages, and that the two nearby houses on Barker Street also have garages. She testified that the existing accessory structure is large enough to fit a single car, but is in need of repair. She testified that she had pushed the proposed second bay of this garage back by approximately six (6) feet to improve its appearance and minimize its massing.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, per the Statement and photographs of record, and as confirmed in testimony, that much of the rear yard is a dedicated Conservation Zone and is located on a steep, wooded slope. The Board further finds, per the Statement, that this property has large side and rear yard trees, and a side yard slope. In addition, the Board notes that the Site Plan shows the limits of a 100-year flood plain in the rear yard. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property.

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

In addition, the Board finds, based on the Statement and the building permit denial, that the existing accessory structure is nonconforming. See Exhibits 3 and 6(a). Section 59-1.4.2 of the Zoning Ordinance defines a "Nonconforming Building or Structure" as "[a] structure that was lawful when constructed, that no longer conforms to the requirements of the zone in which it is located." Thus the Board finds that the proposed development, which will rehabilitate and expand this structure, uses an existing legal nonconforming structure, and satisfies this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Statement indicates that the nonconforming accessory structure was part of the property at the time of its purchase by the Petitioner and her husband. See Exhibit 3. The Board further finds that there is nothing in the record to suggest that the Petitioner is responsible for her property's steep topography to the rear or its location in a Conservation Zone. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner, in satisfaction of this section.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the testimony of record indicates that surrounding homes have garages, and that the requested variance is the minimum needed to allow for the repair of the existing accessory structure and for an addition to that structure sufficient to provide garage space for a second vehicle at this property. See Exhibits 5(a)-(d). The Statement and other documents submitted by the Petitioner make clear that the area to the rear of the existing house, where the Zoning Ordinance would otherwise permit construction of a detached accessory structure such as a garage, is not suitable for the construction of a garage due to its sloping topography and the existing conservation easement and flood plain. See Exhibits 3, 4, and 5(g). Thus the Board finds that the requested variance is the minimum needed to overcome the topographical and other physical challenges of this property, and to allow the proposed development to use this existing legal nonconforming structure, and is therefore the minimum necessary to overcome the practical difficulties that would otherwise be imposed by compliance with the restrictions of the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the subject property is located in the Capitol View Park Historic District, and that the proposed rehabilitation and construction of the existing/proposed garage has been approved by the Historic Preservation Commission, as noted in the Statement and evidenced by the issuance of a Historic Area Work Permit. See Exhibits 3 and 6(b). In light of this approval, the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the relevant plans.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting a variance to allow the proposed rehabilitation and construction of the existing/proposed accessory structure (garage) will not infringe on the use and enjoyment of abutting or confronting properties. In support of this finding, the Board cites the Statement's assertions that the existing accessory structure is "virtually invisible" from the street, and that with the proposed addition, it will be "barely more visible" than the existing structure, due to the orientation of the addition. See Exhibit 3. In addition, the Board notes the Statement's assertions that the only neighbor who asked to see the plans was satisfied with them, and that there has been no opposition to the proposed construction, including before the Historic Preservation Commission.

Accordingly, the requested variance to allow the proposed construction forward of the rear building line is **granted**, subject to the following condition:

1. The Petitioner shall be bound by all of her testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4, 5(a)-(d), and 6(b).

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, Vice Chair, seconded by Bruce Goldensohn, with John H. Pentecost, Chair, and Katherine Freeman in agreement, and with Jon W. Cook necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of March, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.